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POLYGAMY: A CASE STUDY IN PERLIS

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AUTHOR DECLARATION

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I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Praise to Allah SWT Al-Mighty (God), who is the cherisher and sustainer of the universe may the peace and blessings of Allah Almighty be upon Muhammad, the seal of the Prophet.

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ABSTRAK

Dalam latihan ilmiah ini, penulis cuba untuk memaparkan tentang konsep poligami yang terdapat dalam hukum syarak dan pelaksanaan poligami yang diperuntukkan dalam Enakmen Undang-Undang Keluarga Islam (Perlis) 1991. Penulis memilih Negeri Perlis sebagai model kajian untuk melihat sejauhmana pelaksanaan poligami di negeri tersebut. Penulis juga akan menghuraikan tentang syarat-syarat yang dikenakan oleh Negeri Perlis bagi seseorang yang ingin berpoligami. Selain itu penulis juga mengkaji tentang sebab-sebab berlakunya poligami di negeri ini berdasarkan kes-kes yang diputuskan di Mahkamah Syariah Perlis. Akhir sekali penulis cuba membandingkan peruntukan poligami di negeri Perlis dengan negeri-negeri lain.

ABSTRACT

In this academic project, the researcher tried to mention about a polygamy concept that has been stated in rule of Syara' and the performance of polygamy that has been provided in Islamic Family Law Enactment of Perlis 1991. The researcher had chosen the state of Perlis as a model to look how far the performance of polygamy in that state. The researcher also describes about the conditions of polygamy, which imposed by the state of Perlis for a man who wants to practice polygamy. Beside that, the researcher wants to study the causes of polygamy in this state according to the cases, which has been decided in Perlis Syariah Court. Lastly, the researcher tried to compare the provision of polygamy in Perlis with the other state in Malaysia.

ملخص البحث

يناقش هذا البحث العلمي تعدد الزوجات في الأحكام الشرعية خاصة في القانون الشخصي (برليس) 1991. واختارت الكاتبة ولاية برليس للبحث نظرا إلى تنفيذ قانون تعدد الزوجات في هذه الولاية. تبحث الكاتبة أيضا شروط تعدد الزوجات. وبجانب ذلك، تبحث الكاتبة الأسباب التي تسمح بالزواج في الولاية بتصديق محكمة القاضي اعتمادا على القضايا و الدعاوى فيها. وأخير تجرى دراسة مقارنة في تعدد الزوجات في برليس والولايات الأخرى.

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ABBREVIATIONS

AS	‘alayh al-salam
Comp.	Compiler/compiled by
Dr.	doctor
Ed.	Editor/edition/edited by
H	hijriyyah
Hj	Haji
i.e.	that is to say
JAIPs	Islamic Religious Department of Perlis
JAKIM	Jabatan Kemajuan Islam Malaysia
KUIM	Kolej Universiti Islam Malaysia
M	miladiyyah
n.a.	No author
n.d.	No date
No.	Number
n.pb.	No publisher
n.pl.	No place
p.b.u.h.	Peace be upon him
Pg	page
RA	radiallahu’anhu
SAW	sallallahu ‘alaihi wa sallam
SWT	subhanahu wa ta’ala
Trans.	Translator
UKM	Universiti Kebangsaan Malaysia
UM	Universiti Malaya
Vol.	Volume

BACKGROUND OF RESEARCH

INTRODUCTION

Polygamy in the Oxford Dictionary means the custom having more than one wife at the same time. Before the advent of Islam the pagan Arabs without checks or limits practiced polygamy. The result was oppression and injustice for all wives. Imam Malik says in al-Muwatta' that when Ghaylan ibn Salamah accepted Islam he had ten wives. The Messenger of Allah said, "Keep four of them and set the other free". Islam sought to remedy this situation and lay down that a man at one time, and then might take a maximum of four wives only when he possessed the strength of character to deal justly with them. The only Qur'anic verse that refers to polygamy is as follows:

﴿وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ بَدَأَ اللَّهُ يُخَوِّدَ الَّذِينَ ظَلَمُوا ۗ إِنَّهُ عَلِيمٌ مُّذَكِّرٌ﴾

The verse was not merely limited to orphans, but has a general application with regard to the marriage laws in Islam. The Muslim jurists, therefore, have laid down the following conditions if some one wants to take more than one wife. Firstly is he should have sufficient financial resources to look after the needs of the additional wives that he has been taken. Secondly is he must do equal justice to them all. Wives should be treated equally as far as the fulfillment of their conjugal and other rights is concerned.

If a man feels that he will not be able to treat another wife with equality and justice or he does not have the means to support another wife, he should restrict himself to marrying only one wife.

Nowadays polygamy has been a controversial issue not only in Malaysia but also in all Muslim countries in the world. Thus, a specific provision on polygamy has been enacted in the Islamic Family law to control polygamy due to the family instability among the society caused by those who abuse the permission granted by the Quran. In Malaysia, the law according Islamic religious is under the state administration. The administration of Islamic law among the states in Malaysia is difference. The procedure of polygamy between the state and another states is also difference.

Early years 2003, the society was surprising with the issue of polygamy that has been done as a polemic. Government of Perlis state clearly invites men who would like to make the polygamy come to Perlis and not go to Thailand. It is because the requirement of polygamy in Perlis was diffused and the fee also low. The husband no needs to get permission from the first wife.

Objective of Research

The objectives of this research are:

1. To study the provision of polygamy in the Islamic Family Law Enactment (Perlis) 1991
2. To study the relevant of the condition of polygamy which easier in Perlis State.
3. To study the causes of polygamy based on the cases that reported at the Jabatan Agama Islam negeri Perlis.

4. To analyze the advantages and weaknesses the provision of polygamy in this state.

Scope of Research

The scope of the study that the researcher wishes to explain is “Polygamy: A Case Study In Perlis”. The researcher will do a case study in negeri Perlis.

The location that researcher wants to focus is at the Syariah Courts and Jabatan Agama Islam Negeri Perlis. The researcher will study about the laws of polygamy in this state. Whether the diffused of the condition and procedure of polygamy in provision this state give effect to the society.

Research Methodology

In order to get the data, the researcher will use a primary data and secondary data. The researcher will use interview technique. The researcher will conduct the interview at Syariah Court of Perlis. Beside that, the researcher has the opportunity to review the reported cases available in Syariah Court of Perlis state in year 1999 until 2003.

In order to complete this academic project, the researcher also will use the secondary data for example from Islamic books and journals and the other books which related on the topic. This can be done at the libraries, there are the library of Islamic University of Malaysia (KUIM), library of UM, Library of UKM, National library, and others.

Literature Review

Muhammad Iqbal Siddiqi (1984), found in Islam, the practice of polygamy is allowed. It should however, be noted that Islam did not introduce the custom but rather restricted the practice already existing. There is only one verse in the Holy Quran which discusses polygamy:

﴿وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ
فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً﴾

This verse, which is the only one on the topic, clearly shows that the Holy Quran favours the natural course of monogamy: however to meet certain physical, family, social or political situations, it has given permission of polygamy.

Raihanah Haji Abdullah (1997), Polygamy has been a controversial issue not only in Malaysia but also in all Muslim countries in the world. In Malaysia, a specific provision on polygamy has been enacted in the Islamic Family Law to control polygamy due to the family instability among the society caused by those who abuse the permission granted by the Quran. For that reason in Malaysia all of the state enacted that every application for polygamy must get written permission from the Syariah court or Syariah Judge. On section 23(1), Family law Acts 1984 provide clearly about this. The Syariah court made this acts because the society by itself fail to guardian the good of polygamy according to Islam.

Sheikh Muhammad Raf'at Uthman. (1995), found that, Islam does not object to polygamy, it recognized practice among almost all past nations. It existed among the Athenians, the Chinese, the Babylonians, the Assyrians, the Egyptians, and most of those nations did set limit on it. The Christian faith does not have any clear text forbidding polygamy. The reasons for can be either social or personal. Social reasons

come into force when there are more women than men, whether that is under normal circumstances or due to war. This is a situation, which necessitates polygamy in order to safeguard morals. Polygamy is preferable to a situation where there are many husbandless women lacking shelter and the stability of marriage. No sane person prefers the spread of prostitution to polygamy.

Mimi Kamariah Majid (1992), found that, although hukum syara allowed men to marriage for four times in one time. Acts 303 stated requirements before they can do it. Section 23 is the section related to polygamy in Wilayah Persekutuan. The husband must get a written permission from Syarie Judge, if he did not get permission the marriage cannot registered on above this Act. Section 123 said that, the men whom did nit get permission from the Syarie judge but he had marriage, he was made offences. He will be punished to fine until RM 1000 or prison for six months or both of its.

Zaleha Muhammad (2002), found that Islam allowed polygamy if the husband have three requirements, firstly is the husband marriage not more than four wives in one time. Second is the husband done not made cruel for his wives or one of his wives? The husband has obligatory to just to all of his wives in all matter. The lastly is the husband has ability to support his wives.

CHAPTER ONE

CHAPTER ONE

POLYGAMY IN ISLAMIC PERSPECTIVE

1.1 Definition Of Polygamy

Polygamy from the Oxford Advanced Learner's Dictionary mean the custom of having more than one wife at the same time and it is opposite to monogamy. Polygamy is a type of marriage. The word polygamy is comes from the word Greek "Ploy" or "Polus" it means many and the word "Gamein" or "Gamos" means marriage. When these words combined it means a lot of marriage or marriage more than one wife. Polygamy can also be called as the situation or ordinary custom, where a man has more than one wife at the same time. In the France language, polygamy is called "Poligamia" and in Latin Language, it is called "polygamia".¹

Polygamy is a form of marriage that permits a person to have more than one husband or wife. Although monogamy, a marriage consists of only one husband and wife, is the most common form of marriage, polygamy has been known to exist at various times in certain societies. Today plural marriage is seen in some parts of the world, including Subsaharan Africa

¹ Abd Wahid Baharom. 1992.*Poligami Menurut Pandangan Islam*. Shabha- DTP service Sdn Bhd. p.15

There are two types of polygamy, which are polyandry and polygyny. Polyandry is the sharing of a single wife by two or more husbands at the same time. When the husband of a woman are, by choice, brother, the polyandry is called adelphic, or fraternal, polyandry. Polygyny exists when a man has two or more wives at the same time. If the wives are, by preference, sisters, the marriage form is called sororal polygyny. Since polygynous marriages were called polygamy in Mormon society, polygamy has often been confused with polygyny, particularly in United States.²

Polygamy according to Arabic word is Ta'adud al-zaujat (تعدد الزوجات) it means many wives. The word Ta'adud (تعد) come from the word addad (عدد), it shows the number. The word al-zaujat (الزوجات) come the word al-zaujah (الزوجة), which mean wife. Then the combination of the two words becomes one word which is Ta'adud al-zaujat, which mean a man who has many wives or in the other word polygamy.³

1.2. Polygamy before Islam.

Polygamy or marrying more than one wife is not a new phenomenon. Polygamy is an institution that has existed since a long time ago, even it matches with the age of human formation itself. It has always been with mankind from time immemorial among different people in various parts of the world. The Arabians were polygamous even before the advent of Islam and so were other people on most parts of the world during the time. When one goes through Jewish and Christian religious scriptures, one finds that polygamy was an accepted way of life. All the prophets that were mentioned

²Encyclopedia Americana. 1829. International Headquarters: Danbury, Connecticut. p. 365

³Jirwan al-sabiq. 1937. *Majmu Al-lughah, Arab-Inggeris Dictionary*. Beirut: Majuz Bi al-Hukuki. p.618

in the Talmud, the Old Testament (Taurat) and the Quran were polygamous with the exception of Prophet Jesus who if he had lived longer on this earth would have, perhaps, accepted the same system as his forefather. In Pre-Islamic Arabia there was the practice of limitless polygamy.

The institution of polygamy was recognized among Medes, Babylonians, Abyssinians, Chinese and Persians. Moses allowed polygamy among his people since it was practiced by the Greeks among whom a wife was not only transferable but also marketable already prevalent among them. It was customary among the tribes of Africa, Australia and the Mormons of America. The Chinese Li-ki law allows a man to have 130 wives. Even the Hindu law of India does not restrict polygamy. The laws of Manu have laid down specific conditions for celebrating subsequent marriages, it says: "A barren wife may be superseded in the eighth year, she whose children (all) die, in the tenth, she who bears only daughters, in the eleventh, but she who is quarrelsome without delay."⁴

During the period of Rom, polygamy is a custom to the nation, where polygamy was widely practiced without limit. Therefore, to overcome this situation the government enacted a new law towards it. A man, who wants to practice polygamy, must get permission from the first wife and she had all of special right, the other wives got nothing. The second wife was just like servant and they have no right to get heritage.

The Jew allowed polygamy without limit because they believe polygamy was recommended among their race, where they were from Bani Israel tribe. Even their king also married more than one wife. Beside that, they also humiliate the daughter; they allowed a father to sell his daughter.

⁴ Abdur Rahman I.DoI.1992. *Shariah Laws*. Kuala Lumpur: A.S. Noordeen. p.144

In the Syariat of the prophet of Musa a.s, there were no clear verses in Kitab Taurat forbidding polygamy, if the husband can be just to his wives from all aspect of communication, maintenance and place. However the clerics of Jew have different opinion about polygamy, half of them allowed polygamy practiced and the others opposed to it. The clerics of Jew, who disagreed with polygamy, are called Rabbani while the clerics of Jew allowed who polygamy is called Qurra'i. The Qurra'i allowed the practice of polygamy with a condition that the marriage would not give bad effect to the first wife and the new wife.⁵

The Christian faith also does not have any clear text forbidding polygamy. No text can be found in any of Gospels forbidding polygamy. What is stated, by way of exhortation, is that Allah created a spouse for every man. It is only with the most far-fetched interpretation that this text can be construed to mean that it desires to confine a man to one wife in normal circumstances. There is no clear text stating that it is adultery when a man marries a second wife while he is still married to his first wife and that the bond is invalid. Rather one of the epistles of Paul implies that men are permitted to practice polygamy. He said, "A bishop must be the husband of one wife," This implies that polygamy is permitted because it orders bishops alone to restrict themselves to one wife. If polygamy had been forbidden for all, he would not have confined himself mentioning only bishops.⁶

The Jahiliah Arabs used to marry a large number of women and considered them as a chattel. In most cases even there was nothing like marriage as women could be bought and sold it will.⁷

⁵ Abdul Wahid Baharom.1992 .*Poligami Menurut Pandangan Islam*. Shabha- DTP service Sdn Bhd. p. 17-18

⁶ Sheikh Muhammad Rif'at Uthman.1995. *The Laws of Marriage in Islam*. London: Dar Al- Taqwa Ltd. p. 27-28

⁷ Abdur Rahman I.DoI.1992. *Shariah Laws*. Kuala Lumpur: A.S Nordeen. Pages 144

Polygamy has been practiced for a long time before the coming of Islam. The practice of polygamy is very wide without limitation. Therefore there were no justices to the women. The coming of Islam allowed polygamy with the condition that give more justice to all people and society.

1.3. Position of polygamy in Islam

With the advent of Islam, the limitless polygamy was restricted to four wives at one time under circumstances and that too with a number of rules attached to it. The only Qur'anic verses that refers to polygamy is as follows:

﴿وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْنَىٰ وَثُلَاثَ وَرُبَاعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَٰ أَذْنَىٰ أَلَّا تَعُولُوا﴾

“ If you fear that shall not be able to deal justly with the orphan, marry the women of your choice, two, or three or four. But if you fear that you shall not be able to deal justly with them, then only one”⁸

The above rule on the polygamy has been introduced conditionally. This verse more especially refers to be done to the orphans. It was revealed immediately after the Battle of Uhud when the Muslim communities were left with many orphans and widows and some captives of wars. The treatment was to be governed by principles of greatest humanity and equality. As Yusuf Ali says, the occasion is past but remain. Marry orphans if you are quite sure that it is in that way you will protect their interest and their property with perfect justice to them and to your own dependants if you have any. The verse not merely limited to the orphan but it has general application about the marriage laws in Islam.

⁸ Al-Quran. An-Nisa 3: 4

Islam limited the limitless polygamy practiced in the Jahiliyah society of Arabs and non-Arab. It was a fashion with chief and of tribe ruler to keep big harams. Even some Muslim rulers had become victims of passion and practiced limitless polygamy in later periods of Islamic history. Whatever their practice, such polygamy has no place in Islam. If necessary a Muslim can marry up to four wives and not more at a given time. According to Imam al-Shafi'i, it is not lawful for anymore other than Prophet to marry more than four wives at a given time.⁹

According to the Ahlul Sunnah a man are not allowed to married more than four wives at the same time, although during the period of iddah of his wife. If he has four wives, and he wants to marry again, he must divorce one of his wives and wait for a period of iddah of his wife before he can marry another women.¹⁰

Some of the Zahirites maintain that the Qur'anic words Mathna means two, two, thulath, three, three and ruba and thus the number permitted swells to eighteen in number. There are some who think erroneously that "Muthana wa thulath wa ruba" put together comes to nine and thus up to nine wives are allowed in Islam. This is, in reality, a wrong interpretation of the Qur'anic injunction¹¹. The Prophetic interpretation of this verse is contained in the following Hadith of the Prophet:

أن النبي صلى الله عليه وسلم قال لغيلان بن آسية الثقفي وقد اسلم وتحتة عشرة نسوة :

(أختر منهن أربعا وفارق سائران)¹²

The Prophet said to Ghailan bin Umayyah al-Thaqafi who had just accepted Islam and had ten wives: "Choose four out of them and give up all others".

⁹ Abdur Rahman I.DoI. 1992 *Shariah laws*, .Kuala Lumpur: A.S. Noordeen. p. 145

¹⁰ Wahbah al-Zuhaili. 2001. *Fiqh & Perundangan Islam*. (trans.) Ahmad Shahbari Salomon et. al. Vol VII Dewan Bahasa Dan Pustaka. p 228.

¹¹ Abdur Rahman I.DoI. 1992. *Shariah laws*. Kuala Lumpur: A.S Noordeen. p 145

¹² Imam Malik bin Anas r.a , 1985s, *Al-Mawatha*. Bayrut:Darul Ihya' al-Turas Al-Arabi. Kitab Al-Talak. Bab Jamik Talak . Juz' 3:p. 586. #76

The Qur'anic Verses and a Hadith on Polygamy.

The permissibility of polygamy was explained in the Qur'anic verses and Hadith Rasullullah S.A.W as well as the consent from the Fuqaha. The verses from the Qur'anic verses:

﴿إِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ
وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَٰ أَدْنَىٰ أَلَّا تَعُولُوا﴾

“ If you fear that shall not be able to deal justly with the orphan, marry the women of your choice, two, or three or four. But if you fear that you shall not be able to deal justly with them, then only one”¹³

This verse said that a man is allowed to practiced polygamy up to limit of four wives at the same time. Imam Bukhari had reported on the cause of the existing of this verse (Sababul Nuzul) when Urwah bin Zubair had asked Aishah r.a about this ayah. Then Aishah explained to him, that the orphan in this verse is the orphan that is still in the custody of their Wali. Their Wali then wants to marry them because of their beauty and their property but did not just to give them a mahar. Because of that, their wali were not allowed to marry the orphan if they cannot give them justice or they better marry another women.¹⁴

Actually, polygamy in Islam has something to do with the custody of orphan and the relationship between human. It can see clearly be seen if we read ayah three together with the ayah one and two. Allah says:

¹³ Al-Quran. An-Nisa 4: 3

¹⁴ Abd Wahid Baharom.1992. *Poligami Menurut Pendangan Islam*. Shabha- DTP service Sdn Bhd. p.21-22